

[Pursuant to Section 5(3) of the Competition Act No. 12 of 2010; and Section 3A (h) of the Insurance Act, Cap 487]

THE INSURANCE REGULATORY AUTHORITY

AND

THE COMPETITION AUTHORITY OF KENYA

BETWEEN



MEMORANDUM OF UNDERSTANDING



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CAK is located at:
 Kenya Railways Headquarters
 Block "D", Ground Floor
 Workshop Road off Haile Selassie Avenue
 P.O. Box 36265-00200
 Nairobi, Kenya

IRA is located at:
 Zep-Re Place, Longnot Road
 7th Floor, Upper Hill
 P.O. Box 43505-00100
 Nairobi, Kenya

Competition Authority of Kenya ("CAK"), and Insurance Regulatory Authority of Kenya ("IRA"), individually referred to as "the Party", collectively referred to as "the Parties".

2. THE PARTIES

This Memorandum of Understanding (MOU) is entered into in order to establish a framework for co-operation between the Competition Authority of Kenya and the Insurance Regulatory Authority of Kenya concerning their statutory mandates to effectively address competition and consumer protection concerns in the Kenyan insurance sector, including the Parties concurrent mandates of promoting and enforcing compliance with the law, and regulating mergers on specified matters arising or incidental to both the Competition Act, Act No. 12 of 2010 and the Insurance Act, Cap 487. This MOU is entered into on the basis of mutual respect, in a spirit of goodwill and does not affect the independence of the two regulators to undertake their respective statutory mandates.

1. PREAMBLE

MEMORANDUM OF UNDERSTANDING (MOU)
 BETWEEN
 THE COMPETITION AUTHORITY OF KENYA (CAK)
 AND
 THE INSURANCE REGULATORY AUTHORITY (IRA)

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3. ESTABLISHMENT AND RESPONSIBILITIES

3.1. The Competition Authority of Kenya

a) The CAK is established by section 7 of the Competition Act, Act No. 12 of 2010 to, *inter alia*, promote and safeguard competition in the national economy, and to protect consumers from unfair and misleading market conduct.

b) The CAK under section 9 of the Competition Act, is charged with the responsibility of promoting and enforcing compliance with the Act, investigating complaints, carrying out market inquiries, studies and research and investigating government policies, procedures, programs, legislation and proposals for legislation and advising the government in matters related to competition and consumer welfare.

c) The CAK is mandated under section 5(3) of the Competition Act to negotiate agreements with any regulatory body with which it has concurrent jurisdiction in respect of any conduct regulated under the Act in order to identify and establish procedures for management of concurrent jurisdiction.

3.2. The Insurance Regulatory Authority of Kenya

a) The IRA is established by section 3A of the Insurance Act, Cap 487, to ensure the effective administration, supervision, regulation and control of insurance and reinsurance business in Kenya.

b) The IRA formulates and enforces standards for the conduct of insurance and reinsurance business in Kenya; protects the interests of insurance policy holders and insurance beneficiaries in any insurance contract; advises the Government on the national policy to be followed in order to ensure adequate insurance protection and security for national assets and national properties; and issues supervisory guidelines and prudential standards from time to time, for better administration of the insurance business of persons licensed under the Insurance Act.

c) In performing these functions, the IRA has concurrent jurisdiction with the CAK.

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4. PURPOSE

This MOU shall:

- a) Facilitate effective and efficient co-operation between the Parties in the performance of their respective functions in so far as they relate to issues of competition and consumer protection in the insurance sector;
- b) Promote transparency in the insurance sector by increasing accessibility of information on insurance products and services to consumers;
- c) Enhance efficient use of resources by Parties by minimizing duplication of activity and sharing of knowledge;
- d) Reduce the compliance burden on business undertakings;

- e) Establish a joint working committee to develop working procedures and processes to manage and facilitate cooperation and consultation between the Parties on matters relating to competition and consumer protection in the insurance sector; and
- f) Ensure, as far as practicable, consistency in decisions made or other steps taken by the Parties that relate to determination of any issue of competition and consumer protection in the insurance sector.

5. SCOPE

This MOU shall apply to competition and consumer protection issues in the insurance sector.

6. COMMON INTERESTS

The CAK and the IRA are both committed to conduct their regulatory responsibilities in the public interest. They recognize the importance of mutual consultation and cooperation across a wide range of issues relevant to competition, consumer protection in the insurance sector. The CAK and IRA agree that Kenya's insurance sector should be competitive, efficient, and economically sustainable. In entering into this MOU, the CAK and the IRA give due recognition to the need to:

- a) Promote procedural co-operation and coordination between the CAK and the IRA when dealing with cases of anti-competitive behavior or consumer protection in the

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insurance sector where they have overlapping powers;

- b) Facilitate the treatment of cases of anti-competitive behavior within the insurance sector;
- c) Promote co-operation and coordination between the CAK and the IRA when dealing with merger notifications and or approvals in the insurance sector;
- d) Promote cooperation and coordination between the CAK and the IRA when dealing with consumer protection issues in the insurance sector;
- g) Work together to identify and address bottlenecks that restrict entry, investment and competition in the sector, thereby encouraging partnerships between international or regional insurance entities with local insurance entities;
- e) Develop effective collaborative mechanisms to address novel and emerging competition and consumer protection issues in the insurance sector;
- f) Coordinate their activities to eliminate forum shopping among operators in the insurance sector;
- g) Collaborate in the preparation of legislative proposals and regulations that are likely to affect the level of competition in markets within the insurance sector;
- h) Improve understanding of the respective roles of the CAK and the IRA by stakeholders in the insurance sector;
- i) Collaborate to protect consumers of all types of insurance products and services against misleading conduct;
- j) Share relevant information and other matters of mutual interest that may be necessary for the exercise of their functions;
- k) Minimize the duplication of activities and manage divergent opinions, wherever possible; and
- l) Ensure that a consistent and coordinated approach is taken by the Parties in dealing with competition and consumer protection-related issues in the insurance sector.

7. MANNER OF COOPERATION IN AREAS OF CONCURRENT JURISDICTION

7.1. Consultation

In any circumstance in which both Parties are considering an issue or issues of competition in the insurance sector, each Party shall consult with the other in performing any function involving the determination of such issues.

7.2. Cases Invoking Concurrent Jurisdiction

7.2.1. Where a notification, application or complaint is lodged about anti-competitive agreements, practices, or abuse of dominance in the insurance sector; or where a Party initiates an investigation into allegations of the same; or where either party requires the other's expertise to facilitate an investigation and or determination of a matter, the following procedures shall apply:

a) The Party that receives the notification/application/complaint or takes cognizance of the concern through other means shall notify the other Party of the notification/application/complaint or breach warranting investigation within seven (7) working days of receiving the notification;

b) Where the recipient Party does not intend to investigate, it shall notify the other party of its intention within seven (7) working days.

7.2.2. The Parties undertake to expedite consultations to avoid delays in resolution of any complaints and or conclusion of investigations in which both Parties have concurrent jurisdiction.

7.3. Forbearance to Act

7.3.1. Where one Party confirms that the other Party is performing functions in relation to any particular matter, the first Party may agree to forbear to perform any of its functions in relation to that same matter.

7.3.2. Where a Party intends to forbear to perform its functions in the manner described in sub-article 7.3.1 of this Article, it shall first discuss the issue with the other Party, inform it of its intention to apply forbearance, and give the other Party an opportunity to respond.

7.3.3. Either Party may request the other to exercise forbearance in any particular case. The other Party may accede to such request where it is satisfied that the requesting Party is performing the necessary functions in relation to that matter.

7.3.4. Where one Party has agreed to forbear to perform its functions in any particular matter, it may so inform any relevant third parties as it sees fit.

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7.4 Participation

On matters of concurrent jurisdiction where a forbearance to act has not been expressed, a Party may:

a) Make submissions/provide the other Party with comments or expert reports;

b) Participate in the other Party's hearings related to competition or consumer protection in communications cases;

c) Ask for or receive optional or mandatory referrals from the other party related to competition or consumer protection in the insurance sector.

8. JOINT WORKING COMMITTEE

8.1. The Parties shall establish a Joint Working Committee ("the Committee") within six (6) months of signing this MOU. The Committee will be comprised of three (3) representatives each from CAK and IRA as nominated by the Parties pursuant to this MOU and shall function on an on-going basis while reporting to the Commissioner of Insurance and the Director General.

8.2. The functions of the Committee shall include developing mechanisms to realize and implement the areas outlined in Article 6 of this MOU, and:

a) Management and facilitation of cooperation and consultation (including a joint work plan) on matters relating to competition and consumer protection in the insurance sector, including procedures and processes for:

i. The manner of cooperation and consultation between the Parties in regard to restrictive trade practices and agreements in the insurance sector;

ii. The manner of cooperation and consultation between the Parties in regard to mergers in the insurance sector;

iii. The manner of cooperation and consultations between the Parties in regard to market studies in the insurance sector; and

iv. The manner of cooperation and consultations between the Parties in regard to any issues relating to competition and consumer protection in the insurance sector.

- b) Serving as the anchors within both Authorities for jointly addressing technical and substantive issues relating to competition and consumer protection in the insurance sector;
- c) Jointly drafting legislation, regulations and guidelines on competition and consumer protection in the insurance sector;
- d) Developing proposals, where necessary, for amendment or supplementation to this MOU; and,
- e) Advising the Management of CAK and IRA on issues affecting competition and consumer protection in the sector. Such advice shall include, but not be limited to, the following:

i. Cooperation and collaboration in conducting joint market studies in the insurance sector;

ii. Mutual consultation on matters involving competition and consumer protection in the insurance sector, including drafting new legislation, regulations and guidelines;

iii. Amendments to the relevant or applicable legislation, regulations and guidelines that may be necessary from time to time;

iv. Sharing international approaches to addressing issues of competition and consumer protection in the insurance sector;

v. Providing updates and sharing information on recent developments in the insurance sector;

vi. Programs for exchange of staff between Parties; and,

vii. Conducting joint training, workshops and capacity building activities in areas of concurrent jurisdiction or mutual benefit in the insurance sector.



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9. INFORMATION EXCHANGE

9.1. The CAK and the IRA shall exchange such information as may be necessary to actualize this MOU subject to the limitations imposed by legal and regulatory frameworks the Parties are subject to including the Competition Act and the Insurance Act.

9.2. The Parties recognize the intrinsic value of the information they each hold and the potential efficiencies that can be gained from sharing the said information with each other. The Parties therefore undertake to:

a) Pursuant to the law, promote free access to and exchange of information in an efficient, reciprocal and expedient manner;

b) Use the information exchanged under this MOU solely for the purpose for which the relevant information was sought and or disclosed;

c) Keep strictly confidential all information and materials exchanged pursuant to this MOU. Neither Party shall release any such information and/or materials to third parties without prior express written consent of the other Party except as may be required by law.

9.3. Each Party agrees that it will, upon written request, where it agrees that the request is reasonable, provide to the other Party any information in its possession of a kind specified in the request. The request shall provide clear specification and state that the information is required by the Requesting Party for the purpose if the performance of its functions, and shall describe the particular functions for which the information is required.

9.4. Requests for information must be made in writing (for the avoidance of doubt, "writing" includes electronic mail). In cases of urgency, requests for information may at first instance be made orally, and their responses given orally, provided that both requests and responses are subsequently confirmed in writing.

9.5. In the case of information supplied pursuant to this MOU, the provisions of any enactment concerning the disclosure of information by the Respondent Party shall apply to the Requesting Party.

9.6. The Requesting Party may ask that the request itself be considered of a confidential nature.

9.7. The Parties hereby commit themselves to use the information in accordance with the law and solely for the purposes described in the Request.

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9.8. Should the Requesting Party wish to use the shared information for any purpose other than the purposes expressed in the Request it must first obtain the written approval of the Respondent Party.

10. CONFIDENTIALITY

10.1. When exchanging confidential information, the Parties acknowledge the confidentiality provisions of the laws under which they operate. Each party shall respect the confidentiality of information exchanged which has been obtained as a result of the other Party's statutory powers or other legal obligations and relates to the affairs of any individual, business or undertaking.

10.2. Each Party agrees not to disclose any confidential information obtained pursuant to this MOU to a third party unless it has obtained prior consent of the Party which has provided the confidential information. Each Party shall comply with any non-disclosure obligations that are binding on the other, in particular those set out in the Competition Act and the Insurance Act.

10.3. Each party agrees to take reasonable steps to ensure that access to the confidential information obtained pursuant to this MOU is limited internally to only those staff members who require the information. Each Party shall also ensure that its staff understand the contents of this Article and adhere to it.

10.4. In no event shall any party disclose any information which is protected as confidential under either the Competition Act or the Insurance Act.

11. FOCAL CONTACTS

Each Party shall nominate a focal contact to liaise, communicate and respond to requests for information from the other Party for the purposes of this MOU.

12. STATUS OF THE PARTIES

12.1. Neither Party nor its staff shall be considered as an official, agent, employee or representative of the other Party. Neither Party shall enter into any contract or commitment on behalf of the other Party.

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12.2. Each Party shall carry out its own responsibilities and obligations under this MOU in accordance with the national and international laws, regulations and treaties applicable to it and unless separately agreed in writing, bear its own costs in relation to implementation of this MOU.

12.3. This MOU shall not create any binding legal obligations between or amongst the Parties.

12.4. This MOU does not amount to a delegation of any of the powers, duties or obligations of the Parties.

12.5. This MOU does not create, directly or indirectly, any rights, obligations or liabilities enforceable by the Parties or by any third party.

12.6. Nothing in this MOU restricts, enlarges, or otherwise modifies the respective jurisdictions of the Parties.

12.7. All intellectual property rights, title and interest associated with each Parties' supervisory and regulatory know how, including without limitation, patent, trademark, copyright, trade secret rights, and moral rights shall remain in the respective Party. Further, neither Party will use, in any manner, including advertising or publicity or in any way related to this MOU or the subject matter hereof, the name of the other party or its affiliates or any of their directors, officers, managers, employees, consultants or agents or any trade name, trademark, service mark, logo, symbol or copyright, whether any of the above are registered or unregistered, of the other Authority or its affiliates, except with the express written consent of such other Party.

13. DISPUTE RESOLUTION

13.1. Parties shall adhere to the above procedures and shall continuously engage in consultations, exchange of information and review of processes of the mechanisms in order to avoid disputes. Parties undertake to use their best efforts towards amicable settlement of any disputes, controversy or claims arising out of this MOU or the breach, termination or invalidity thereof.

13.2. In the event that amicable settlement of the dispute, controversy or claim fails, the Director General, CAK and the Commissioner of Insurance shall endeavor to negotiate an amicable settlement in good faith.

This MOU shall be a public document.

18. PUBLIC DOCUMENT

The MOU shall come into force on the date on which it is signed by persons authorized to act on behalf of the Parties.

17. EFFECTIVE DATE OF THE MOU

The Joint Working Committee shall evaluate and monitor the outputs facilitated by this MOU in such manner as may be appropriate for the execution of its function.

16. MONITORING AND EVALUATION

This MOU may only be amended by mutual written agreement of the Parties. Either Party may terminate the MOU upon issuance of a sixty day (60) notice in writing to the other Party. The initiation of arbitration or any other dispute resolution mechanism pursuant to the provisions of this MOU shall not in itself be deemed as termination of this MOU or a ground for its termination. Parties shall await the outcome of any dispute resolution process pursuant to Article 13 of this MOU before serving notice to terminate this MOU. This MOU shall enter into force upon signature by both Parties and shall remain in force unless terminated.

15. DURATION, AMENDMENT AND TERMINATION

In the event of a conflict between this MOU and the laws applicable to either Party, the Parties shall resort to the dispute settlement mechanisms in Article 13.

14. INCONSISTENCIES OF LAWS

13.3. In the event the negotiations fail, the Parties shall refer the matter to a mediation panel comprising three members, one appointed by each of the parties who shall then appoint the Chairman of the panel.

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IN WITNESS WHEREOF, the duly authorized representatives of the parties affix their

signatures below.

THIS MEMORANDUM OF UNDERSTANDING (MOU) is made on the 11th day of April Two Thousand and Sixteen.

For the Competition Authority of Kenya;

Mr. Wang'ombe Karuki

Director General

In the Presence of:

BOYACE M. MAKOVE

For the Insurance Regulatory Authority;

Mr. Sammy M. Makove

Chief Executive Officer/Commissioner

of Insurance

In the Presence of:

STANLEY MUMUKI

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